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**IN THE
COURT OF APPEALS OF INDIANA**

JEFFREY ALHOLM,)	
)	
Appellant-Petitioner,)	
)	
vs.)	No. 48A02-0608-CV-644
)	
REBECCA ALHOLM,)	
)	
Appellee-Respondent.)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable James O. Anderson, Special Judge
Cause No. 48D01-0503-DR-202

July 18, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

The marriage of Appellant-Petitioner Jeffrey Alholm (“Jeffrey”) and Appellee-Respondent Rebecca Alholm (“Rebecca”) was dissolved on June 29, 2006. Jeffrey now appeals the division of marital property and the attorney’s fees award. We affirm.

Issues

Jeffrey presents three issues for our review:

- I. Whether the attorney’s fees award is clearly erroneous;
- II. Whether the division of the marital estate is clearly erroneous;
- III. Whether the dissolution decree omitted essential parenting time provisions.

Facts and Procedural History

Jeffrey and Rebecca were married on October 5, 2003. The parties had one child together, T.A., born January 12, 2005. On March 3, 2005, Jeffrey petitioned to dissolve the marriage.

The trial court conducted a final hearing on November 17, 2005 and on February 9, 2006. At the conclusion of the February 9, 2006 final hearing, the trial court ordered the parties to mediation in order to resolve disputed issues of custody and parenting time. On April 25, 2006, a Partial Mediated Agreement was filed with the trial court. On May 1, 2006, the trial court approved the agreement, which settled issues of custody and parenting time and provided for the appointment of a parenting coordinator.

On May 11, 2006, the final hearing resumed and was concluded. On June 29, 2006, the trial court issued its findings of fact, conclusions of law, and order dissolving the

marriage and dividing the marital estate. Jeffrey now appeals.

Discussion and Decision

I. Attorney's Fees

Jeffrey challenges the order that he pay \$8,500.00 of Rebecca's attorney's fees, arguing that she did not establish the reasonableness of those fees. Further, Jeffrey claims that Rebecca should be ordered to pay a portion of his attorney's fees, due to her fraudulent, contemptuous, and obdurate behavior. More specifically, Jeffrey claims that Rebecca prolonged custody negotiations, made unfounded allegations that he dissipated business funds, and caused him to incur additional attorney's fees in a collateral lawsuit.

The trial court has broad discretion in awarding attorney's fees. In re Marriage of Bartley, 712 N.E.2d 537, 546 (Ind. Ct. App. 1999). We will reverse the trial court's decision to award attorney's fees only if the decision is clearly against the logic and effect of the facts and circumstances. Id. When determining whether an award of attorney's fees is appropriate, the court may consider such factors as the resources of the parties, the relative earning ability of the parties, and other factors that bear on the reasonableness of the award. Id. When one party is in a superior position to pay fees over the other party, an award of attorney fees is proper. Id.

The trial court's findings of fact address in detail the disparate current incomes and earnings histories of the parties. The evidence of record establishes that Jeffrey, the chief operating officer of Symbios Medical, has significantly more income than does Rebecca. Symbios Medical had been paying Jeffrey a salary of eight thousand dollars per month, in addition to certain living expenses. After an interruption in employment, Rebecca was

working as a sales representative entitled to take \$25,000.00 annually as a draw against future commissions (with the potential for excess commissions). However, she had enrolled in college classes and arranged future employment at Starbucks for \$7.50 per hour. Under these circumstances, the trial court's decision to award Rebecca attorney's fees is not an abuse of discretion.

Moreover, although Jeffrey now argues that Rebecca failed to establish the reasonableness of the fees, we observe that he made no challenge to the hourly rate but rather took issue with the number of hours expended. Ultimately, however, Rebecca was awarded fees for less than half the time expended. She was awarded \$8,500.00 out of \$19,946.36 total.

Jeffrey's argument that he should be awarded attorney's fees fails for two reasons. First, he is clearly the party in a superior economic position. Second, Rebecca was not found in contempt of court so as to support an award of fees to Jeffrey apart from economic considerations. Jeffrey has failed to show clear error in the findings and conclusions with respect to attorney's fees.

II. Property Division

A. Standard of Review – Property Division

The distribution of marital property is committed to the sound discretion of the trial court. Breeden v. Breeden, 678 N.E.2d 423, 427 (Ind. Ct. App. 1997). However, Indiana Code Section 31-15-7-5 creates a rebuttable presumption that an equal division of the marital property of the parties is just and reasonable. Akers v. Akers, 729 N.E.2d 1029, 1033 (Ind. Ct. App. 2000). A party who challenges the trial court's division of marital property must

overcome a strong presumption that the court considered and complied with the applicable statute. In re Bartley, 712 N.E.2d at 542.

When, as here, the trial court finds the facts specially and states its conclusions thereon pursuant to Indiana Trial Rule 52, the court on appeal shall not set aside the findings or judgment unless clearly erroneous. State Farm Mut. Auto Ins. Co. v. Leybman, 777 N.E.2d 763, 765 (Ind. Ct. App. 2002), trans. denied. We review the judgment by determining, first, whether the evidence supports the findings and, second, whether the findings support the judgment. Evans v. Med. and Prof'l Collection Servs., Inc., 741 N.E.2d 795, 797 (Ind. Ct. App. 2001). We consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom, and we neither reweigh the evidence nor assess witness credibility. Id. However, appellate courts owe no deference to trial court determinations deemed questions of law. GKN Co. v. Magness, 744 N.E.2d 397, 401 (Ind. 2001).

B. Analysis

At the final hearing, Jeffrey proposed that the property division order should permit Rebecca to “walk away with her assets” but she should be ordered to pay his parents \$30,000.00 to reimburse their advancement of funds for the purchase of the marital residence. (Tr. 361.) In dividing the marital estate, the trial court set aside to Rebecca the value of her inheritances but concluded that the funds from Jeffrey’s parents were a joint gift rather than a loan.

Jeffrey now argues that the trial court’s award of 79% of the marital estate to Rebecca must be reversed because (1) marital debt was improperly excluded and (2) the trial court

treated the parties disparately by equally dividing proceeds from the sale of the marital residence while allowing Rebecca to retain her entire inheritance.

Indiana Code Section 31-15-7-5 governs the distribution of marital property and provides as follows:

The court shall presume that an equal division of the marital property between the parties is just and reasonable. However, this presumption may be rebutted by a party who presents relevant evidence, including evidence concerning the following factors, that an equal division would not be just and reasonable:

- (1) The contribution of each spouse to the acquisition of the property, regardless of whether the contribution was income producing.
- (2) The extent to which the property was acquired by each spouse:
 - (A) before the marriage; or
 - (B) through inheritance or gift.
- (3) The economic circumstances of each spouse at the time the disposition of the property is to become effective, including the desirability of awarding the family residence or the right to dwell in the family residence for such periods as the court considers just to the spouse having custody of any children.
- (4) The conduct of the parties during the marriage as related to the disposition or dissipation of their property.

Accordingly, Indiana Code Section 31-15-7-5 requires the trial court to presume that an equal division of marital property is just and reasonable, absent relevant evidence to rebut the presumption. Capehart v. Capehart, 705 N.E.2d 533, 536 (Ind. Ct. App. 1999), trans. denied.

Indiana's "one pot" theory prohibits the exclusion of any asset in which a party has a vested interest from the scope of the trial court's power to divide and award. Hann v. Hann, 655 N.E.2d 566, 569 (Ind. Ct. App. 1995). Accordingly, the systematic exclusion of any marital asset from the marital pot is erroneous, including those attributable to a gift or an

inheritance from one spouse's parents. Wallace v. Wallace, 714 N.E.2d 774, 780 (Ind. Ct. App. 1999), trans. denied. However, although the trial court must include all assets in the marital pot, it may ultimately decide to award an asset solely to one spouse as part of its just and reasonable property division. Coffey v. Coffey, 649 N.E.2d 1074, 1077 (Ind. Ct. App. 1995); see also Indiana Code § 31-15-7-5 (providing that the trial court may consider as evidence to rebut the presumptive equal distribution “the extent to which the property was acquired by each spouse through inheritance or gift”).

Here, the trial court set aside to Rebecca the value of her recent inheritance from her grandmother (\$83,000.00) and the value of her anticipated inheritance from her recently deceased grandfather's estate (\$14,000.00). Meanwhile, the trial court equally divided the net proceeds from the sale of the marital residence (\$30,206.22), and declined to treat the \$60,000.00 down payment from Jeffrey's parents as a loan to be repaid.¹ Additionally, the trial court did not include within the marital pot Jeffrey's business debt or debt to his ex-wife.² This resulted in a substantial deviation from the presumptive 50/50 split.

The trial court explained the deviation as follows:

Given the disparity of the parties' earnings and ability to earn income in the future; the fact that Becky has been out of the workforce during the marriage and has only re-entered the workforce as of November 2005; the short-term period of this marriage; the contributions made by each party during the marriage; Becky's inheritance received during the marriage; and the conduct of the parties during the marriage, the Court, after determining the value of the

¹ The parties cleared less than the \$60,000.00 down payment partially because of delinquent mortgage payments and late fees.

² Jeffrey testified that he was anticipating a settlement from a lawsuit against his former business associates, and owed his ex-wife “twenty percent after all expenses are paid.” (Tr. 285.)

marital estate as shown above, finds that there should be a deviation from the 50/50 presumption and that said deviation is reasonable.

(App. 18.) The evidentiary record supporting the deviation from the presumptive 50/50 split is as follows. Jeffrey's earnings history and potential were significantly greater than Rebecca's. Rebecca had experienced an employment interruption prior to and following the birth of the parties' child. She had recently obtained employment in sales, but anticipated returning to college to pursue a nursing degree. The funds Rebecca inherited from her grandmother were received during the short-term marriage, and she testified that she used a portion of those funds to pay marital expenses when neither she nor Jeffrey had predictable employment income. Rebecca also testified that she incurred charge card debt for household expenses.³ She had not yet received the anticipated \$14,000.00 from her grandfather's estate when the marriage dissolved.

The circumstances under which funds were obtained from Jeffrey's parents prior to the marriage suggest a joint gift. The funds were transferred to Rebecca to purchase a residence to be occupied as the marital residence. Jeffrey was never named on the deed. The transfer of funds from Jeffrey's parents was not accompanied by a note or loan documents. Jeffrey and Rebecca did not make any installment payments to Jeffrey's parents. There is no evidence of record that the parents were investors entitled to share in either gain or loss from the sale of the residence. In short, the trial court's determination that a gift was bestowed has evidentiary support.

³ Pursuant to the property division order, Rebecca was solely liable for this charge card debt.

Moreover, the parties did not request that the trial court make a valuation of Jeffrey's business in order to divide assets or debts. With respect to allegedly excluded debts, Jeffrey testified that litigation with his former business partners resulted in a settlement offer to him of \$90,000.00, but there were two liens against it, "fifty three [thousand]" to Sequel as a "loan secured by this judgment" (Tr. 282), and "twenty percent after all expenses" to his first ex-wife. (Tr. 285.) After taking into account his attorney's fees and the liens, he estimated "nothing left in pocket." (Tr. 285.) Consistent with Jeffrey's testimony, the anticipated judgment was not included as a marital asset, and the debts to be paid out of the judgment were not included as marital debt.⁴ In light of the foregoing, the trial court's division of the marital estate is not clearly erroneous.

III. Parenting Time

Finally, Jeffrey contends that the trial court erroneously omitted two provisions upon which the parties had agreed in principle, specifically, that neither would permit a third party to administer physical discipline to T.A. and that Rebecca would give Jeffrey a right of first refusal to care for T.A. when T.A. would otherwise be left in the care of a third party.

At the first hearing, Rebecca testified that she and Jeffrey agreed no third party would spank T.A., and Jeffrey testified that spanking was acceptable only in limited circumstances. Thereafter, the parties submitted their mediated agreement to the trial court with the representation that matters regarding T.A.'s custody and the exercise of parenting time had been resolved. The parents also agreed to the appointment of a parenting coordinator to

⁴ Because of Indiana's "one-pot" theory, the better practice would have been to list all assets and debts incurred by each party, even if the net result were zero. It is harmless error here, in light of the mathematical

address future concerns without litigation. The physical discipline and right of first refusal provisions are not included in the written mediated agreement, and to the extent that there may be a need for greater specificity, the concerns are appropriate for resolution with the parenting coordinator. The trial court specifically approved the custody/parenting time agreement on May 1, 2006, which the trial court could reasonably have expected to obviate the need to address these matters in the dissolution decree. We find no abuse of discretion arising from these alleged omissions.

Conclusion

The evidence of record supports the findings of the trial court and the findings support the judgment. As such, the challenged property distribution and the order for the payment of attorney's fees are not clearly erroneous.

Affirmed.

SHARPNACK, J., and MAY, J., concur.

outcome and the agreement that Rebecca would disclaim any interest in Jeffrey's business litigation proceeds.